

West Coast Liquidators, Inc. and Freight Handlers, Clerks & Helpers Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 21-CA-20943

May 27, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

Upon a charge filed on January 21, 1982, by Freight Handlers, Clerks & Helpers Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on West Coast Liquidators, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 21, issued a complaint on March 4, 1982, against Respondent, alleging, as later amended, that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended.¹ Copies of the charge and complaint and notice of hearing before an administrative law judge, and the amendment to the complaint, were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on September 16, 1981, following a Board election in Case 21-RC-16762, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;² and that, commencing on or about September

24, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On March 15, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On March 26, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on April 2, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint allegations concerning the request and refusal to bargain, Respondent admits that it refused to recognize the Union. Further Respondent does not dispute the authenticity of either the letter dated September 16, 1981, in which the Union made a formal demand on Respondent to bargain with it concerning the employees in the appropriate unit, or the letter dated September 24, 1981, in which Respondent informed the Union that Respondent was denying its request to bargain.³ Thus, we find that there is no substantial or material issue concerning the request to bargain by the Union or Respondent's subsequent refusal to do so. However, in its answer to the complaint and in its opposition to the Motion for Summary Judgment, Respondent asserts that the Union's certification is invalid because of unlawful threats and bribes of employees made by Union "agents" in the Union's organizational campaign. In this regard, Respondent points out that in the underlying representation proceeding it was not afforded a hearing on its objections including the allegations concerning the "agency status" of certain employees, and it requests a hearing at this time. In his Motion for Summary Judgment and ar-

¹ The original complaint in this case concerns charges alleging both a general refusal to bargain by Respondent on and after September 24, 1981, as well as allegations concerning an unfair labor practice strike. However, on March 19, 1982, the Regional Director issued an amendment to the complaint in which he deleted pars. 10(a) and (b) in their entirety. All allegations concerning the unfair labor practice strike in the original complaint were found in those deleted paragraphs. Consequently, the Motion for Summary Judgment—and thus the matter here before the Board—concerns only allegations that since on or about September 24, 1981, Respondent has violated Sec. 8(a)(5) and (1) of the Act by refusing to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit. We find no merit, therefore, to Respondent's contention, raised in its response to the Notice To Show Cause, that the Board, despite the General Counsel's withdrawal of the complaint's unfair labor practice strike allegations, should decide the issue of the unfair labor practice strike at this time. Prior to the hearing, the regional director issuing the complaint, on behalf of the General Counsel, has the discretion to amend any complaint upon such terms as may be deemed just. National Labor Relations Board Rules and Regulations, Series 8, as amended, Sec. 102.17.

² Official notice is taken of the record in the representation proceeding. Case 21-RC-16762, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enf'd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enf'd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573

(D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enf'd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

³ Nor does Respondent dispute the authenticity of a letter from the Union dated November 19, 1981, containing a second formal demand for bargaining or the authenticity of the December 2, 1981, letter from Respondent in which it again informed the Union that Respondent was denying its request for bargaining.

gument in support, counsel for the General Counsel contends that Respondent raises no issues which were not considered in the underlying representation proceeding, that there exists no factual issue litigable before the Board, and that, therefore, no hearing is required. We agree with counsel for the General Counsel.

Our review of the record herein, including the record in Case 21-RC-16762, reveals that following a hearing before a hearing officer of the National Labor Relations Board, the Regional Director for Region 21, on July 7, 1981, issued a Decision and Direction of Election in which the appropriate unit for collective bargaining was found to consist of:

All warehouse employees, pricers, fork lift operators, order pullers, sorters, line feeders, inventory employees and shipping and receiving employees employed by [Respondent] at its facility located at 20640 Fordyce, Carson, California; excluding all other employees, office clerical employees, guards, professional employees, and supervisors as defined in the Act.

On August 13, 1981, an election by secret ballot was conducted under the direction and supervision of the Regional Director for Region 21 among the employees of Respondent in the unit found appropriate. The tally of ballots shows that of approximately 43 eligible voters, 23 cast ballots for, and 14 against, the Petitioner. There was one challenged ballot, a number insufficient to affect the results. On August 20, 1981, Respondent timely filed objections to the election. On September 16, 1981, the Regional Director for Region 21 issued a Supplemental Decision and Certification of Representative overruling Respondent's objections in their entirety and certifying the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit. On September 29, 1981, Respondent timely filed a request for review of the Regional Director's Supplemental Decision and Certification of Representative which was denied by the Board, by telegram dated November 6, 1981. In denying Respondent's request for review, the Board necessarily found that there were no substantial or material issues warranting a hearing. Respondent now raises those same issues raised in the representation case in an attempt to obtain a hearing herein. It is well settled, however, that there is no requirement that an evidentiary hearing be held where there are no substantial or material issues of fact.⁴ Accordingly, it appears that Re-

spondent is trying to relitigate issues previously litigated in the representation case.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.⁵

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

West Coast Liquidators, Inc., a California corporation, has been engaged in wholesaling and distribution at its facility located at 20640 Fordyce, Carson, California. In the course and conduct of its business operations, Respondent annually purchases and receives goods and products valued in excess of \$50,000 directly from suppliers located outside the State of California.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Freight Handlers, Clerks & Helpers Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

⁴ *Janler Plastic Mold Corporation*, 191 NLRB 162 (1971).

⁵ See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All warehouse employees, pricers, fork lift operators, order pullers, sorters, line feeders, inventory employees and shipping and receiving employees employed by [Respondent] at its facility located at 20640 Fordyce, Carson, California; excluding all other employees, office clerical employees, guards, professional employees, and supervisors as defined in the Act.

2. The certification

On August 13, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 21, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on September 16, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about September 16, 1981, and at all times thereafter, including November 19, 1981, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about September 24, 1981, and continuing at all times thereafter to date, including December 2, 1981, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since September 24, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. West Coast Liquidators, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Freight Handlers, Clerks & Helpers Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All warehouse employees, pricers, fork lift operators, order pullers, sorters, line feeders, inventory employees and shipping and receiving employees employed by [Respondent] at its facility located at 20640 Fordyce, Carson, California; excluding all other employees, office clerical employees, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the

purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since September 16, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about September 24, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, West Coast Liquidators, Inc., Carson, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Freight Handlers, Clerks & Helpers Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

All warehouse employees, pricers, fork lift operators, order pullers, sorters, line feeders, inventory employees and shipping and receiving employees employed by [Respondent] at its facility located at 20640 Fordyce, Carson, California; excluding all other employees, office clerical employees, guards, professional employees, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its 20640 Fordyce, Carson, California, facility copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁶ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Freight Handlers, Clerks & Helpers Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of

pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All warehouse employees, pricers, fork lift operators, order pullers, sorters, line feeders, inventory employees and shipping and re-

ceiving employees employed by us at our facility located at 20640 Fordyce, Carson, California; excluding all other employees, office clerical employees, guards, professional employees, and supervisors as defined in the Act.

WEST COAST LIQUIDATORS, INC.